

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WA.No. 1910 of 2007

AGAINST THE JUDGEMENT IN WPC.29428/2004 Dated 04/02/2005
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APPELLANT/ PETITIONER:

M/S. PUTHANANGADI FLOUR & OIL MILLS,
KALLETUMKARA, THRISSUR DISTRICT,
REPRESENTED BY ITS PARTNER, N.J.NIXON.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON &
SRI.MAHESH V.MENON

RESPONDENTS/ RESPONDENTS:

- 1. DISTRICT INDUSTRIES CENTRE,
THRISSUR,
REPRESENTED BY ITS GENERAL MANAGER.
2. THE DEPARTMENT OF DISTRICT INDUSTRIES AND COMMERCE,
REP. BY ITS DIRECTOR,
THIRUVANANTHAPURAM.
3. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF INDUSTRIES (B),
THIRUVANANTHAPURAM.

BY SR. GOVERNMENT PLEADER SR.I MUHAMMED RAFIQ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 15/11/2007,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, CJ. & K. M. JOSEPH, J.

W.A. NO. 1910 OF 2007

Dated this the 15th November, 2007

JUDGMENT

H.L. DATTU, CJ.

Questioning the correctness or otherwise of the Order passed by the learned Single Judge in W.P.(C). No.29428/04 dated 4.2.2005, the petitioner in the Writ Petition has presented this Writ Appeal. In filing the Writ Appeal, there is a delay of nearly 864 days. To condone the delay, the appellant has filed an application under Section 5 of the Limitation Act.

2. The matter is posted before us for consideration of that application.

3. Delay in filing the Writ Appeal is satisfactorily explained. Therefore, the delay in filing the Writ Appeal is condoned.

4. Heard the learned counsel appearing for the parties to the lis on merits.

5. In the Writ Petition filed, the petitioner had called in question the correctness or otherwise of the order passed by the Director of Industries and Commerce (Ext.P7) and the order passed by the General Manager, District Industries Centre, Thrissur (Ext.P8) dated 26.2.2004 and 27.7.2004 respectively. Incidentally, the petitioner had also called in question Ext.P9 notice issued by the Deputy Commissioner, Commercial Taxes, Thrissur dated 22.9.2004.

6. The learned Single Judge while disposing of the Writ Petition, has observed, that, the petitioner has merely called in question Ext.P9 notice issued by the Deputy Commissioner, Commercial Taxes, Thrissur. The

learned Single Judge has also noted that during the pendency of the Writ petition, an order has been passed by the Deputy Commissioner of Commercial Taxes, setting aside the order of assessment passed for the assessment year 1997 - 1998 and has remanded the matter to the assessing authority to re-do the matter in accordance with law. It was also held that if the appellant has any grievance against the order, there is a statutory appeal provided for against the same before the Tribunal.

7. The counsel for appellant would inform us that the appellant had in fact primarily questioned the correctness or otherwise of Ext.P7 order passed by the Director of Industries and Commerce and Ext.P5 order passed by the General Manager, District Industries Centre, Thrissur. The consequential prayer was only to quash Ext.P9 notice issued by the Deputy Commissioner of Commercial Taxes, Thrissur.

8. It is also brought to our notice by the learned counsel for appellant that the appellant cannot question Exts.P7 and P8 orders before any other Forum, except before this Court.

9. In our opinion, this factual information should have been brought to the notice of the learned Single Judge at the time of disposal of the Writ Petition.

10. We have gone through the reliefs sought for by the petitioner in the Writ Petition. What we find from the pleadings is that the petitioner, in fact, primarily was aggrieved by Exts.P7 and P8 orders by the Director of Industries and Commerce and the General Manager, District Industries Centre, Thrissur, and the consequential prayer was to quash Ext.P9 notice. The learned Single Judge ought to have considered those two orders on

merits, since the petitioner has no other alternative remedy provided in any enactment, which has bearing on the issues involved in Exts.P7 and Ext.P8 orders. This is not done by the learned Single Judge. Therefore, we cannot sustain the order passed by the learned Single Judge. Accordingly, we set aside the order of the learned Single Judge and remand the matter to the learned Single Judge, with a request to consider the main prayer sought for by the petitioner in accordance with law.

Ordered accordingly.

**H.L. DATTU,
CHIEF JUSTICE**

**K.M. JOSEPH,
JUDGE**

kbk/DK.